

Submitted for Approval: August 25, 2010

**CITY OF MORGAN HILL  
JOINT REGULAR CITY COUNCIL AND  
REGULAR REDEVELOPMENT AGENCY MEETING  
MINUTES - JULY 21, 2010**

**CALL TO ORDER**

Mayor/Chair Tate called the Joint Regular City Council and Redevelopment Agency meeting to order at 7:00 p.m.

**ROLL CALL ATTENDANCE**

Present: Council Members: Carr, Lee, Librers, Sellers, Tate  
Absent: Council Members: None

**DECLARATION OF POSTING OF AGENDA**

Minutes Clerk Wilson certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

**PROCLAMATIONS / RECOGNITIONS / INTRODUCTIONS**

**CITY COUNCIL REPORT**

Mayor/Chair Tate had no reports.

**CITY MANAGER REPORT**

City Manger Tewes introduced Michelle Wilson from Council Services and Records and spoke regarding the preparation of the agenda and supplements. He spoke of the various supplements and what they are. City Manager Tewes mentioned that Jim Ashcraft regrettably is not in attendance of this meeting because he is retiring. His reception will be Friday July 23, 2010 at 3:00 p.m. in the Council Chambers.

**CITY ATTORNEY REPORT**

City Attorney Wan had no reports.

**OTHER REPORTS**

Next week's meeting will start with a closed session at 6:00 pm.

**PUBLIC COMMENT**

Frank Manocchio asked that Item 28, the City Clerk City/Treasurer measure be moved up and he would like to address the Council on this item. Mayor Tate was concerned that someone else may

have seen that it was towards the end of the agenda and may not be here yet. City Manager Ed Tewes suggested that he speak now. He spoke in regards to his concerns on item 28.

Frank Manocchio spoke in regards to item 28.  
Art College voiced that he is opposed to item 28.

Public Comment was closed.

## ***City Council and Redevelopment Agency Action***

### **ADOPTION OF AGENDA**

Mayor/Chair Tate announced that there were no changes to the Agenda.

***Action:*** *On a motion by Council/Agency Member Lee and seconded by Council/Agency Member Sellers Adopting the Agenda as posted. The motion passed by the following vote: Ayes: 5; Noes: 0, Absent: 0.*

## ***City Council Action***

### **CONSENT CALENDAR:**

#### **ITEMS 1-10**

Lee asked to pull items 12 and 13 for discussion.

***Action:*** *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Librers Approving the City Council and Redevelopment Agency Consent Calendar Items 1 through 11 and 14 through 17. Item 7 naming Mayor Tate as the Primary Signer and Mayor Pro Tem Librers as the alternate. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

#### **1. ACCEPT DIANA PARK WELL PROJECT**

##### **Recommended Action(s):**

1. **Accepting** as complete the Diana Park Well Project in the final amount of \$652,558; and
2. **Directing** the City Clerk to file the Notice of Completion with the County Recorder's Office.

#### **2. AWARD OF GLEN AYRE BOOSTER PUMP STATION PROJECT**

##### **Recommended Action(s):**

1. **Approving** project plans and specifications; and
2. **Awarding** contract to Guerra Construction Group for the construction of the Glen Ayre Booster Pump Station Project in the amount of \$203,145; and
3. **Authorizing** expenditure of construction contingency funds not to exceed \$30,472.

#### **3. AWARD GALVAN PARK SOCCER FIELD GRADING AND IRRIGATION REPLACEMENT PROJECT**

##### **Recommended Action(s):**

1. **Approving** project plans and specifications; and
2. **Awarding** contract to Blossom Valley Construction in the amount of \$174,296; and
3. **Authorizing** expenditure of construction contingency funds not to exceed \$17,429.

4. **APPROVAL OF PGE SMART METER LICENSE**  
**Recommended Action(s):** **Authorizing** the City Manager to execute the License Agreement.
5. **ENVIRONMENTAL PROGRAMS STAFFING CHANGES**  
**Recommended Action(s):**
  1. **Accepting** staff recommended plan for absorbing workload assigned to Environmental Programs Coordinator; and
  2. **Amending** FY 2010-11 authorized personnel allocations to increase Programs Administrator from 0.95 Full Time Employee (FTE) to 1 FTE, Municipal Services Assistant from 0.5FTE to 0.6FTE and delete 0.6FTE Environmental Programs Coordinator position.
6. **AMEND PROFESSIONAL SERVICES CONTRACT TO PREPARE CIVIL DESIGN DOCUMENTS FOR THE BUTTERFIELD BLVD SOUTH EXTENSION PROJECT**  
**Recommended Action(s):**
  1. **Approving** professional service agreement time extension; and
  2. **Approving** the additional scope of work from Mark Thomas & Company, Inc. in the amount of \$127,490 and authorize the City Manager to execute an amendment to the existing professional services agreement for preparation of design/construction documents for the Butterfield Boulevard South Extension Project.
7. **SUSTAINABLE SENIOR SERVICES PLANNING EFFORT**  
**Recommended Action(s):**
  1. **Approving** Sustainable Senior Services Planning effort goals; and
  2. **Appointing** one member of the City Council to serve on the Sustainable Senior Services Steering Committee; and
  3. **Directing** staff to return with Steering Committee member recommendations by September 1, 2010.
8. **AMENDMENT TO THE EMPLOYMENT AGREEMENTS WITH THE CITY MANAGER AND CITY ATTORNEY**  
**Recommended Action(s):**
  1. **Approving** proposed amendments to the employment agreements; and
  2. **Authorizing** the Mayor to execute the agreements.
9. **JUNE 2010 FINANCIAL & INVESTMENT REPORTS**  
**Recommended Action(s):** **Accepting** and filing report.
10. **EXCEPTION TO LOSS OF BUILDING ALLOTMENT, ELBA-10-07: GINGER – CUSTOM ONE**  
**Recommended Action(s):** **Adopting** Resolution No. 6344 granting an Exception to Loss of Building Allotment (ELBA).

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

#### **ITEMS 11-14**

**11. 17675 WOODLAND AVENUE HOUSING REHABILITATION LOAN**

**Recommended Action(s):**

1. **Adopting** Resolution No. MHRA-321 approving an Agency loan of up to \$60,000 for 17675 Woodland Avenue in conformance with the Housing Rehabilitation Program; and
2. **Authorizing** the Executive Director to do everything necessary to prepare and execute loan documents.

**12. CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT AND TOURISM MARKETING PLAN FOR FY 10-11 (pulled for discussion)**

**Recommended Action(s)**

1. **Accepting** annual report; and
2. **Authorizing** the Executive Director to execute an agreement, in an amount not to exceed \$106,600, with the Morgan Hill Chamber of Commerce to implement their Economic Development and Tourism scope of services for FY 10-11.

Business Assistance and Housing Services Director Toy presented the staff report.

**13. FUNDING REQUEST FROM THE MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) (pulled for discussion)**

**Recommended Action(s):**

1. **Accepting** the annual report; and
2. **Authorizing** the Executive Director to prepare and execute an agreement with MHDA in an amount not to exceed \$89,000.

**14. JUNE 2010 FINANCIAL & INVESTMENT REPORT**

**Recommended Action(s): Accepting and filing report.**

## ***City Council and Redevelopment Agency Action***

### **CONSENT CALENDAR:**

#### **ITEMS 15-17**

**15. APPROVE REAL PROPERTY PURCHASE AGREEMENTS RELATED TO WEST DUNNE AVENUE WIDENING PROJECT**

**Recommended Action(s):**

1. **Adopting** Resolution No. 6345 authorizing the City Manager to execute purchase agreements for the acquisition of easements from 16 parcels necessary for the construction of the W. Dunne Avenue Widening Project.

**16. Approving the Joint Regular City Council and Redevelopment Agency Meeting Minutes for June 16, 2010**

**17. Approving the Special City Council and Joint Regular City Council and Redevelopment Agency Meeting Minutes for June 23, 2010**

## ***Redevelopment Agency Consent Calendar Items Pulled for Discussion***

### **12. CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT AND TOURISM MARKETING PLAN FOR FY 10-11 (2 Supplements filed)**

#### **Recommended Action(s)**

1. **Accepting** annual report; and
2. **Authorizing** the Executive Director to execute an agreement, in an amount not to exceed \$106,600, with the Morgan Hill Chamber of Commerce to implement their Economic Development and Tourism scope of services for FY 10-11.

**Business Assistance and Housing Services Director Toy presented the staff report.**

Mayor Tate opened the public comment

None

Council/Agency Member Lee stated that she is going to be in favor of passing this item tonight and commented that in going forward we may want to look at how we allocate the money and perhaps basing it on performance measures. As we focus on services and revenue we need to approach this differently than we have in the past.

Mayor Tate agreed with Council Member Lee in that we need to work more on the tying of the measurements and see them in our quarterly reports.

***Action:*** *On a motion by Council Member Lee and seconded by Council Member Sellers Approving consent calendar item 12. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

### **13. FUNDING REQUEST FROM THE MORGAN HILL DOWNTOWN ASSOCIATION (MHDA)**

#### **Recommended Action(s):**

1. **Accepting** the annual report; and
2. **Authorizing** the Executive Director to prepare and execute an agreement with MHDA in an amount not to exceed \$89,000.

Council/Agency Member Lee commented that we are hopeful that things are going to improve economically in the future, but that we may have to look at funding requests in a different way and take a different approach in the future.

Council/Agency Member Sellers spoke to differences between the Chamber of Commerce and the Downtown Association. The Downtown Association and the City have a unique partnership and it is mutually beneficial and that we should try to maintain the financial relationship with the Downtown Association.

Council/Agency Member Lee commented that she does not disagree and that we need to approach this in a different way.

***Action:*** *On a motion by Council Member Sellers and seconded by Council Member Lee Approving Consent Calendar Item 13. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

## ***City Council Action***

### **PUBLIC HEARINGS:**

#### **ITEMS 18-21**

#### **18. WATER-EFFICIENT LANDSCAPING ORDINANCE**

##### **Recommended Action(s)**

1. **Open/Close** public hearing; and
2. **Waive** the first and second reading of Ordinance; and
3. **Introduce** Ordinance.

Environmental Programs Administrator Eulo presented the staff report.

Mayor Tate opened the public hearing at 7:22 p.m.

Frank Manocchio

Hearing no further comments, the public hearing was closed at 7:25 p.m.

Council Member Sellers stated that he appreciates Mr. Manocchio comments.

***Action:*** *On a motion by Council Member Sellers and seconded by Council Member Librers Waiving the first and second reading of Ordinance No. 1990. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

***Action:*** *On a motion by Council Member Sellers and seconded by Council Member Librers Introducing Ordinance No. 1990, New Series An Ordinance of the City Council of the City of Morgan Hill Amending Chapter 18.73 (Water Conserving Landscapes) of Title 18 (Zoning) of the Municipal Code of the City of Morgan Hill establishing new landscaping regulations pursuant to the California Water Conservation in Landscaping Act. (Title Read Into record). The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

#### **19. 2010 WEED ABATEMENT PROGRAM ASSESSMENT REPORT – PROGRAM CHARGES (Supplement filed)**

##### **Recommended Action(s)**

1. **Open/Close** public hearing; and
2. **Adopt** Resolution A ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens be posted against the properties on the report; and
3. **Adopt** Resolution B ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens be posted against the properties on the report; and
4. **Adopt** Resolution C ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens be posted against the properties on the report.

Environmental Programs Administrator Eulo presented the staff report.

Moe Kumre Weed Abatement Coordinator for the County of Santa Clara Department of Agriculture and Environmental Management stated that in Morgan Hill for the 2010 Weed Abatement season there were 371 properties that were approved in the January Hearing for abatement should property owners fail to comply. All 371 properties were inspected, of that, 91 parcels failed the initial inspection and only 26 required abatement. There was a 93% compliance rate. Out of the parcels listed two parcels were able to show that the County was in error when charging the inspection fee. Mr. Kumre then spoke of last year's statistics.

In response to Council Member Sellers, regarding the unique weather and how the County accounts for that, Mr. Kumre stated they do take the weather into account and that they didn't start their inspections in the beginning of April because it had been wet, they pushed their inspections out a month. The issue they run into with moving up the inspection date is that they have a legal deadline to submit the bills to the tax collector by August 10<sup>th</sup>. The majority of the inspections were pushed back by two weeks.

In response to Council Member Carr regarding the contractors that the County works with and how their billing and schedule of costs work, Mr. Kumre stated that the contractors have to follow the bidding process and they have to bid on the different work they do. Tractor work and discing in charged by acre, running a weed wacker or a mower is charged by the hour. The County takes that rate plus the 150% administrative fee and that is what is in the assessment report. The current contractors are with the lowest bidders.

In response to Council Member Sellers regarding fees and calculation of fees and Council Member Carr regarding cost per parcel, Mr. Kumre stated that the administrative fee is 150% of what the contractor charges for every parcel. The only time it is different is when it is for a municipality.

In response to Council Member Carr's question of why we don't charge them a flat fee since the administrative work is the same, Mr. Kumre stated that the reason they went with a higher fee is that they still have to cover the costs to the county. Only failed inspections pay the fees, the program is supported entirely by the fees collected by those who do not comply.

Mayor Tate opened the public hearing at 7:42 p.m.

The following speakers spoke regarding item 19  
Bill Robson  
Isaac Abrams  
Rocke Garcia  
Dick Oliver

Hearing no further comments, the public hearing was closed at 7:54 p.m.

In response to Mayor Tate's comments to the list and how you get on it, Mr. Kumre stated that to be on the list the property has to be found to be non-compliant during the fire season. Mr. Kumre said that as suggested by City Staff the County will be putting together a letter in February to inform property owners that the deadline is coming up. They have had several property owners communicate with the County regarding their plans to abate the weeds and when they can complete it. Mr. Kumre also stated that the list is put together in October and they have no way of knowing if the property

owner has sold their property and therefore must treat two adjoining parcels that may be owned by the same person as two separate parcels. The fees are associated to a parcel not an individual.

In response to Council Member Lee regarding Mr. Abrams property and using a weed wacker versus a tractor, Mr. Kumre stated that the 20 acre property was fenced and gated and the contractor was unable to put a tractor on the property, there was also no indication of cattle. Mr. Kumre stated that there is a gravel driveway and a barbed wire fence but no gate. He cannot confirm who owns the driveway and could see no clear indication of where to get on to the property. Mr. Kumre said that they requested permission to abate the weeds by hand and that the parcel is adjacent to a home development, he also had Code Enforcement contacting them wanting to know when the work would be done in this parcel.

In response to Council Member Lee's comment regarding a large parcel of land not being done by tractor, Mr. Kumre stated that they intended to do it by tractor but had no access to property and they had to go in any way that they could.

In response to Council Member Lee's question of was the property owner contacted for permission to access the property, Mr. Kumre said that two letters were sent, including a courtesy notice that was sent out after the inspection on April 26, 2010, notifying him that there was a problem on the property. The notice includes contact information for the inspector.

Council Member Lee asked wouldn't it be more cost efficient to call property owner to gain permission to enter the property, Mr. Kumre stated that Mr. Abrams had sent in the response card in December stating his plan to abate the weeds. Mr. Kumre stated that in most cases they do not call the property owner to notify them but rather send a courtesy card to allow people the opportunity to take care of the problem.

In response to Council Member Lee's question of which entity oversees the weed abatement program that we could start a dialogue with regarding the 150% administrative costs, Mr. Kumre stated the it is the Department of Agriculture and Environmental Management and that the reason the fee is not a flat rate is because it is intended to cover all costs because there are no public funds to cover the expense.

In response to Council Member Librers' comments regarding the situation with this land owner and the appeal process, Mr. Kumre stated that this public hearing is the appeal process and that this property is an agricultural property and is adjacent to a residential development.

Council Member Librers stated that she feels that the situation was poorly handled especially for a property this size and is very concerned about the amount of the fee.

Council Member Sellers agrees that it is an important program; however, we need to find balance. As it has evolved, we have contracted with the County because it is more efficient.

In response to Council Member Sellers' question of what latitude do we have as a City in regard to fees, Mr. Kumre stated it is his understanding that the City has the choice of accepting or rejecting the charges of each property individually and whatever decision the City makes the County is obligated to follow it. The City can request the County review a fee. Mr. Kumre stated that they will work with any property owner that is willing to do the work.



In response to Council Member Sellers' question of, if we do request a review what is the process, Mr. Kumre stated that he still has to cover the cost of the contractor; in previous cases he has waived the administrative fee. He would be willing to consider reducing the charges in the case to cover the contractor costs. Mr. Kumre also stated that the City could take care of it right now if the City agrees to the charge.

In response to Council Member Carr's question what the cost would have been if they had gotten a tractor on the property, Mr. Kumre stated that it is approximately \$600.00 per acre that needs to be disked, they only charge for the land that was disked.

Council Member Sellers commented that it seems equitable to reduce the fee to \$2900 and direct County to be more proactive and make phone calls. He also commented that the \$298.00 inspection fee is reasonable.

Mayor Tate stated that he agrees it should have been disced, but had they pursued contacting the owner that is an administrative expense.

Council Member Carr requested that a letter be sent to either Board of Supervisors or the County Executive regarding 150% administrative fee. He does not see how that is equitable and would like to ask them to re-evaluate the formula.

Council Member Lee concurred with Carr's recommendation.

City Attorney Wan suggested that as a procedure matter the Council takes care of the three resolutions then have a separate motion asking the County to examine the fee. He also stated that the Weed Abatement Program is a City program and that it is within our contractual rights to ask the County to examine the fees.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Lee Approving Resolution No. 6346 (A) ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens be posted against the properties on the report. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

*Page 264, Line 22 Tax roll amount changed to \$2,900.00*

*Page 265, Line 64 is stricken in its entirety*

*Page 267, line 87 is stricken in its entirety*

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Lee Approving Resolution No. 6347 (B) ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens be posted against the properties on the report. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Tate Recused).*

Mayor Tate recused himself from the dais.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Lee Approving Resolution No. 6348 (C) ordering the final report on the 2010 Weed Abatement Program Assessment Report – Program Charges be transmitted to the Santa Clara County Assessor's Office and that liens*

be posted against the properties on the report. *The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Librers Recused).*

Council Member Librers recused herself from the dais.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Lee **Directing** staff to write a letter to the Board of Supervisors requesting review of the administrative charges with the County for this program. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

Mayor Tate recessed the meeting at 8:21p.m., Mayor Tate reconvened at 8:30p.m.

Item 27 was heard out of order prior to item 20.

**20. CITY OF MORGAN HILL LANDSCAPE ASSESSMENT DISTRICT NUMBER 1 (FOX HOLLOW) ADOPTION OF RESOLUTION CONFIRMING FISCAL YEAR 2010-11 ANNUAL ASSESSMENTS**

**Recommended Action(s)**

1. **Open/Close** public hearing; and
2. **Adopt** the attached Resolution confirming the Fiscal Year 2010-11 Annual Assessments and ordering the levy for assessments for the district.

Environmental Programs Administrator Eulo presented the staff report.

Mayor Tate opened the public hearing at 8:33p.m., hearing no requests to speak. The public hearing was closed.

**Action:** *On a motion by Council/Agency Member Sellers and seconded by Council/Agency Member Lee **Approving** Resolution No. 6349 confirming the Fiscal Year 2010-11 Annual Assessments and ordering the levy for assessments for the district. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

**21. ANNUAL REPORT FROM THE MORGAN HILL DOWNTOWN PROPERTY BASED IMPROVEMENTS DISTRICT**

**Recommended Action(s)**

1. **Conduct** public hearing; and
2. **Adopt** a Resolution which approves the Morgan Hill Downtown Property Based Improvement District (MHDPBID) annual report.

Business Assistance and Housing Services Director Toy presented the staff report

Mayor Tate opened the public hearing at 8:38 p.m.

Gary Walton  
Rocke Garcia

Hearing no further comments, the public hearing was closed at 8:44 p.m.

Council Member Lee commended the MHDPBID on their success.

Council Member Sellers spoke to the visionary leaders who have carried the program through and thanked the members of MHDPBID for their service.

**Action:** *On a motion by Council Member Sellers and seconded by Council Member Carr **Approving** Resolution No. 6350 which approves the Morgan Hill Downtown Property Based Improvement District (MHDPBID) annual report. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

## ***Redevelopment Agency Action***

### **PUBLIC HEARINGS:**

#### **ITEMS 22-23**

#### **22. LEASE AMENDMENT WITH VARIOUS TECHNOLOGIES, INC. DBA ECO-SPARC**

##### **Recommended Action(s)**

1. **Open/close** the public hearing; and
2. **Approve** the lease amendment between the Morgan Hill Redevelopment Agency and Various Technologies, inc. DBA Eco-Sparc for space located at 17490 Monterey Road, Unit 8, Morgan Hill.

Business Assistance and Housing Services Director Toy presented the staff report.

Agency Member Lee asked if they are current on the rent, Business Assistance and Housing Services Director Toy answered yes they are.

Chair Tate opened the public hearing at 8:49 p.m., hearing no requests to speak. The public hearing was closed.

Agency Member Sellers spoke in support of Eco- Sparc.

**Action:** *On a motion by Agency Member Sellers and seconded by Agency Member Librers **Approving** the lease amendment between the Morgan Hill Redevelopment Agency and Various Technologies, inc. DBA Eco-Sparc for space located at 17490 Monterey Road, Unit 8, Morgan Hill. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

#### **23. SALE OF AGENCY OWNED BMR UNIT AT 14763 EXCALIBER DRIVE TO QUALIFIED BUYER**

##### **Recommended Action(s)**

1. **Conduct** public hearing; and
2. **Adopt** Resolution authorizing the Executive Director to do everything necessary and appropriate to prepare and execute agreements and related documents to sell BMR unit to Diane and Hamid Mahmoudi for \$172,386, less the Agency's share of closing/escrow costs.

Business Assistance and Housing Services Director Toy presented the staff report.

In response to Agency Member Lee concerning fair market value; Business Assistance and Housing Services Director Toy stated in this case we should have increased the price by CPI factors and they have enacted policy steps to ensure that the mistake is not made in the future.

In response to Agency Member Librers regarding the closing costs; Business Assistance and Housing Services Director Toy stated yes there are closing costs and in this case the costs are around \$1,000

Chair Tate opened the public hearing at 8:52 p.m.

Diane Mahmoudi

Hearing no further comments, the public hearing was closed at 8:54 p.m.

Agency Member Sellers stated it would be inequitable to ask them to increase the cost after the fact.

Agency Member Librers would like to see cost increased to cover closing costs.

***Action:*** *On a motion by Agency Member Sellers and seconded by Agency Member Lee Approving Resolution No. MHRA-312 authorizing the Executive Director to do everything necessary and appropriate to prepare and execute agreements and related documents to sell BMR unit to Diane and Hamid Mahmoudi for \$172,386, less the Agency's share of closing/escrow costs. The motion passed by the following vote: Ayes: 5, Noes: 0, Absent: 0.*

## ***City Council Action***

### **OTHER BUSINESS:**

#### **ITEMS 24-28**

#### **24. ISSUES RELATING TO ALCOHOL SALES AND CONSUMPTION DOWNTOWN**

**Recommended Action(s):** (Supplement filed)

**Review** report and provide policy direction on three issues:

1. Is there a need for further enforcement of existing regulations affecting M&H Tavern and Dirty's Tap and Taco?
2. Is there a need for new "conditions of approval" for Downtown Special Events?
3. Is there a need for new regulations applicable to existing and new businesses serving alcohol downtown?

City Manager Ed Tewes presented the staff report.

In response to Council Member Librers concerning the police reports, Commander Sampson stated that there were no reports of alcohol issues; however on June 2<sup>nd</sup> there were some issues at Dirty's.

In response to Council Member Librers regarding the supplement confirming that there have been three incidences in July, Commander Sampson stated that the fourth of July weekend was pretty quiete downtown because most people were at Community Park for the events, most of the downtown business closed for the weekend.

Council Member Librers commented that considering the large number of patrons it seems that the situation has improved.

In response to Council Member Lee regarding audits ensuring the proportion of food sales to alcohol sales, City Manager Tewes stated that it is done on a complaint basis and at that in time the State will request data to audit the records. City Manager Tewes continued that there is a recent example of a restaurant in Morgan Hill that failed to provide the appropriate records and they have been temporarily closed.

In response to Council Member Carr questioning when the foot patrols started, Commander Sampson stated that foot patrols started in late June and it has had significant impact. The foot patrol consists of a 2 person teams on Friday and Saturday evenings.

In response to Council Member Lee's question is that in addition to regular patrols, Commander Sampson stated that it is in addition to the regular patrol.

Mayor Tate opened the public comment.

Public Comment on item #24-discussion item 1

Susan Hall (presented conceptual plans for façade upgrades, notes not received)  
Sally Casas  
Laura Gonzalez-Escoto  
Brian Sullivan

Council Member Sellers spoke to design and lighting and he would like to see the façade improvements continue. In regards to patrol he agrees with having increased patrol in the summer months; the presence would be a positive thing.

Council Member Lee commented that there will continue to be issues with people drinking before they head downtown, we are off to a good start talking about it and trying to move forward. She continued that we do not need further action.

Council Member Carr stated his concern regarding violence and drunkenness downtown and that he is pleased with Mrs. Hall's awareness of the issues. He supports façade and lighting improvements and feels that they will make a big difference, however does not support foot patrols at tax-payers' expense.

Mayor Tate commented that he supports Council Member Carr's comments that foot patrols not being at the tax-payers' expense and would like to see the lighting in the parking lot improved.

Council Member Lee commented that if downtown is becoming a place where more people will be going, she is concerned about putting the cost of foot patrols on business owners.

Council Member Librers shared that she is happy to hear that there has been no gang violence and feels that no further action is required against M&H Tavern.

No specific action taken on item #24-discussion item 1

City Manager Tewes provided information regarding downtown event permits.

In response to Council Member Carr concerning an obvious increase in incidence during downtown events, how does the security plan mitigate the increase in incidents, City Manager Tewes stated that it would be our intent to ensure that the security plan addresses the issues that arise out of the events.

Public Comment on item #24-discussion item 2

Dennis Kennedy  
Laura Gonzalez-Escoto  
Brian Sullivan

Council Member Lee commented about people bringing their own alcohol to events and to having a conversation as to how to limit that in the future.

Council Member Sellers spoke on downtown events and that when it first started it was about a part of downtown and showcasing the businesses and that it has become less about downtown businesses. He would like to see, as a part of the approval process, how the event will compliment the downtown businesses and how would they limit the bringing in of outside alcohol.

In response to Council Member Lee concerning the start time of alcohol sales at the taste of Morgan Hill, Chris Giusiana stated that the license begins at 10:00a.m., however, people do not start drinking until after 11:00a.m. or so.

Council Member Lee suggested that alcohol sales don't start until noon, Chris Giusiana stated they stop serving alcohol a half an hour before the event closes and commented on private security and their presence.

Council Member Librers supports a security plan and stated that it should be reviewed by City staff and the Police Department.

Council Member Carr commented on a security plan, he would like to see some details regarding very visible presence, and that the plan should address more than just vendor security.

Mayor Tate supports a formal security plan, and commented that it is very difficult for those selling the alcohol to tell how drunk people are.

City Manager Tewes commented as to training being part of the conditions of approval.

Deputy City Attorney Billingsly provided information regarding the proposed policy on item 3. City Attorney Wan commented in regards to nuisance issues and the fees that are associated.

In response to Council Member Sellers concerning giving direction regarding Municipal Code changes and modifying the guidelines, Deputy City Attorney Billingsly stated that guidelines could be modified. City Attorney Wan stated the difference between current businesses and new businesses.

In response to Council Member Librers regarding the deemed approved ordinance, who regulates nuisances; Deputy City Attorney Billingsly stated that it can come from citizens or police and that it would depend on the definition of nuisances. Deputy City Attorney Billingsly stated that Council can determine the definition of nuisance.

Public Comment on item #24-discussion item 3

Susan Hall  
Adolf Sanchez  
Sally Casas  
Jeff Burrus  
Dennis Kennedy  
Brian Sullivan

In response to Council Member Lee concerning the funding of the increased downtown police foot patrol; Dennis Kennedy stated that one option would be to have the businesses that cause the nuisances fund the foot patrol and that another would be to use RDA funds to pay for increased foot patrol. He also suggested discussing the options with the downtown board and allowing the board to weigh in on the options.

City Manager Tewes commented as to what constitutes a nuisance and the process of establishing the definitions of nuisances.

Mayor Tate commented as to nuisances and the definitions of nuisances.

City Attorney Wan stated that we would define specific behaviors and imposing cost on business or person responsible for the nuisance.

City Manager Tewes spoke of financing specialized patrols and that there are assessment districts available to the City

Council Member Sellers stated that there needs to be more discussion and the need for working with the Chamber of Commerce and Downtown businesses. He would like to hear more community dialogue.

Council Member Librers asked if a workshop could be held.

Council Member Sellers stated it should start with community dialogue.

Council Member Librers supports new regulations and stated she has seen positive turnaround.

Council Member Lee is concerned with business deemed to be causing nuisance covering the cost of the nuisances.

Council Member Carr commented as to continuing the discussion and looking at alternatives as well as preparing for growth downtown and dealing with foreseeable problems. He feels that discussion regarding costs of downtown nuisances is needed and to look at how to share the costs.

Mayor Tate stated that he believes in local control and as of now we do not have that, he would rather have more control. He also stated that he supports the suggestions and defining nuisances. He would like to pursue the nuisance items and does not support putting costs on establishments that are not involved.

Council Member Lee is concerned about Council being left out of the discussions and would like to hear the issues and suggestions first hand and be a part of the discussions.

In response to Carr regarding lighting and facades, City Manager Tewes stated that we are seeking to improve parking lot lighting with LED lights and we can deal with public lots, however, we cannot deal with private parking lots.

**Action:** *On a motion by Council Member Lee and seconded by Mayor Tate **Scheduling** a workshop for late September with the Chamber of Commerce, Downtown Association and Downtown Businesses. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

Mayor Tate recessed the meeting at 10:37p.m., Mayor Tate reconvened at 10:44p.m.

Council Member Sellers recused himself and left the dais.

**25. SOLAR ENERGY REBATE APPLICATION FEE (Supplement Filed)**

**Recommended Action(s):**

1. **Direct** staff to cancel the City's rebate application at this time; **OR**
2. **Appropriate** \$42,500 from fund 740 and direct staff to pay the rebate application fee.

Environmental Programs Administrator presented the staff report.

**Action:** *On a motion by Council/Agency Member Lee and seconded by Council/Agency Member Carr **Directing** staff to cancel the Solar Energy Rebate Application Fee. The motion passed by the following vote: Ayes: 4; Noes: 0; Absent: 1 (Sellers Recused).*

*Sellers returned to the dais*

**26. RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) BUILDING ALLOTMENT FOR FISCAL YEAR 2012-13**

**Recommended Action(s):**

1. **Adopt** the attached Resolution approving the total building allotment for FY 2012-13 and distribution of the building for separate affordable, small project, micro project, CC-R/CL-R zone area, multi-family rental, senior and open/market competitions.

Planning Manager Jim Rowe presented the staff report.

In response to Council Member Carr's question of why are we saying zero on ongoing projects, Planning Manager Rowe stated that the reason we are saying zero is that they are not automatically giving allocations, rather they are having developers compete the allocations. There are four potential projects that could be considered eligible if they meet the qualifications by the specified deadline. So by not having the on-going category it gives the Planning Commission flexibility in assigning allocations.

In response to Council Member Carr's concern that by saying zero on the on-going projects we are extending the build out of the projects, Planning Manager Rowe stated that if there is not an automatic allocation the developers will compete for the allocations.



City Manager Tewes commented that these projects have not been completed for economic reasons. They are legacy projects based on economics established 5 years ago. Projects that can go forward on this year's economics won't have as many allocations to compete for.

In response to Council Member Librers comment that she is concerned that by not giving them the allocations they have to compete again and that process is major in terms of staff time. Council Member Librers continued that it would not be fair to make them compete when we have been giving them allocations and extensions all along. Planning Manager Rowe stated that they are not losing the allocations they are just on hold for one year.

Mayor Tate opened the public comment at 10:57p.m.

Dick Oliver

In response to Council Member Lee's question that Mr. Oliver can apply for the on-going it is not automatically extended; City Manager Tewes stated the Planning Commission is recommending that there be no automatic allocations, however, Mr. Oliver is asking for an automatic seven allocations.

Council Member Librers commented that since there are seven categories they could grant Mr. Oliver the seven allocations, one from each category, that way no one group would take a big hit.

Mayor Tate commented that they do not expect to get any affordable or senior applications so the Planning Commission will be re-allocating.

Council Member Sellers commented that it would more appropriate to change this tonight than have seven in on-going. Planning Manager Rowe stated that having the category there was intended so that the Planning Commission would have the ability to see what projects came in and award allocations to eligible projects. Planning Manager Rowe continued that if you put seven in the ongoing, there are two projects that can draw from that seven and you cannot restrict one from getting those allocations.

In response to Council Member Sellers' question what would be the more appropriate way to handle this situation, Planning Manager Rowe stated that there are two ways project can draw from the ongoing; competes but doesn't score well enough to win allocations or not apply and request an on-going distribution. Planning Manager Rowe commented that he suggests that the City Council indicate their support of giving Mr. Oliver the allocations.

Council Member Carr suggested that Council ask the Planning Commission to review the allocations and put some allocations into ongoing projects.

Planning Manager Rowe suggested that before the October filing deadline have commission revisit and reconsider the allocations.

**Action:** On a motion by Council Member Librers and seconded by Council Member Carr **Directing** the Planning Commission to review the allocations for the on-going projects. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.

**Action:** *On a motion by Council Member Lee and seconded by Council Member Carr **Continuing** the City Council meeting to 11:30pm. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

Item #27 City Council Other Business, Heard out of Order after item 20.

**27. PARKS AND RECREATION COMMISSION, PLANNING COMMISSION AND LIBRARY, CULTURE AND ARTS COMMISSION WORK PLANS**

**Recommended Action(s):**

1. **Adopt** the Parks and Recreation Commission, Planning Commission and Library, Culture and Arts Commission work plans.

**Action:** *On a motion by Council Member Lee and seconded by Council Member Sellers **Continuing** the Parks and Recreation Commission, Planning Commission and Library, Culture and Arts Commission work plans to the meeting on July 28, 2010. The motion passed by the following vote: Ayes: 5; Noes: 0; Absent: 0.*

**28. ADOPT A RESOLUTION SUBMITTING TO THE VOTERS A BALLOT MEASURE REGARDING CITY CLERK & CITY TREASURER OFFICES ON THE NOVEMBER 2, 2010 GENERAL ELECTION**

**Recommended Action(s):**

1. **Adopt** Resolution submitting measure to the voters at the November 2, 2010 municipal election seeking voter approval for appointive City Clerk & City Treasurer; and
2. **Adopt** Resolution establishing a process for arguments for and against the proposed measure; and
3. **Consider** adopting a resolution authorizing filing of rebuttal arguments submitted at municipal elections.

Assistant to the City Manager Stott presented the staff report.

Mayor Tate opened the public comment at 11:11p.m.

Spoke during public comment (spoke earlier in the meeting during the public comment period)

Frank Manocchio  
Art College

Hearing no further comments, the public comment was closed.

Council Member Sellers stated that he understands the concerns and believes it warrants being taken to the voters. He also commented that we have been graced with two outstanding individuals. His biggest concern is that the Treasurer can make significant investment decisions which can have a huge impact on our community.

Mayor Tate spoke to the qualifications of the two positions and that the only qualification is that you are a registered voter and maybe not the most qualified person would get appointed. Each month the City publishes the financial reports and Mayor Tate is very proud of our award winning budget and

the City's transparency. Mayor Tate stated that he would be very concerned if an unqualified person were to try and make it work.

Council Member Lee stated that she has been against the idea however is torn on how to move forward.

Council Member Librers commented that they would not just appoint a person; there would be an interview process and a job description. Council Member Librers continued that once they appointed someone it would be a qualified person. Council Member Librers stated that she is more concerned that an unqualified person would run and get it.

Council Member Lee commented that you are still taking it out of the hands of the voters, something that has been in the hands of the voters for many years.

Council Member Sellers commented that the Council should prepare the initial ballot arguments and the subsequent set be done by Council unless there are other groups that want to weigh in.

Mayor Tate commented that if they don't have the full Council support for the ballot measure that they will need other people to weigh in.

Council Member Carr commented that the roles have changed and it may be more appropriate at this time to have the positions be more professional positions rather than them being political positions.

Council Member Librers stated that we don't know how long the two current individuals will continue, they may decide not to run in the future and it is open to anyone who would like to pull papers and run for the position.

Council Member Lee asked if it would be advantageous to require qualifications other than being eighteen and a registered voter.

Council Member Sellers stated no, you cannot and that is the problem. The challenge would be having people running for the positions that didn't have the appropriate qualifications.

Mayor Tate recommends that two people be appointed to prepare the ballot agreements. Mayor Tate stated he would be one of the preparers.

**Action:** *On a motion by Council Member Carr and seconded by Council Member Librers **Approving** Resolution No. 6351 submitting measure to the voters at the November 2, 2010 municipal election seeking voter approval for appointive City Clerk & City Treasurer and appointing and Mayor Tate and Council Member Sellers to prepare the arguments for the measure and Resolution No. 6352 establishing a process for arguments for and against the proposed measure. The motion passed by the following vote: Ayes: 4; Noes: 1(Lee), Absent: 0.*

**FUTURE COUNCIL AGENCY-INITIATED AGENDA ITEMS:**

No items were identified.

***City Council and Redevelopment Agency Action***  
**CLOSED SESSION:**

City Attorney Wan read the closed session item into the record.

**CONFERENCE WITH LABOR NEGOTIATOR:**

Authority:	Pursuant to Government Code Section 54957.6
City Negotiators:	City Manager, City Attorney, Assistant to the City Manager
Employee Organization:	Morgan Hill Police Officers Association

**OPPORTUNITY FOR PUBLIC COMMENT**

Mayor/Chair Tate opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Mayor/Chair Tate adjourned the meeting to Closed Session 11:08 p.m.

**CLOSED SESSION ANNOUNCEMENT**

City Manager Tewes announced that no reportable action was taken in Closed Session.

**ADJOURNMENT**

There being no further business, Mayor/Chair Tate adjourned the meeting at 11:22 p.m.

**MINUTES RECORDED AND PREPARED BY:**

  
\_\_\_\_\_  
Michelle Wilson, Minutes Clerk